

PCT

To:

see form PCT/ISA/220

WRITTEN OPINION OF THE
INTERNATIONAL SEARCHING AUTHORITY
(PCT Rule 43bis.1)

Date of mailing

(day/month/year) see form PCT/ISA/210 (second sheet)

Applicant's or agent's file reference
see form PCT/ISA/220

FOR FURTHER ACTION

See paragraph 2 below

International application No.
PCT/CH2004/000526

International filing date (day/month/year)
20.08.2004

Priority date (day/month/year)
02.09.2003

International Patent Classification (IPC) or both national classification and IPC
A61L9/12, A01M1/20

Applicant
GIVAUDAN SA

1. This opinion contains indications relating to the following items:

- ☒ Box No. I Basis of the opinion
- ☒ Box No. II Priority
- ☐ Box No. III Non-establishment of opinion with regard to novelty, inventive step and industrial applicability
- ☐ Box No. IV Lack of unity of invention
- ☒ Box No. V Reasoned statement under Rule 43bis.1(a)(i) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement
- ☐ Box No. VI Certain documents cited
- ☒ Box No. VII Certain defects in the international application
- ☒ Box No. VIII Certain observations on the international application

2. **FURTHER ACTION**

If a demand for international preliminary examination is made, this opinion will usually be considered to be a written opinion of the International Preliminary Examining Authority ("IPEA"). However, this does not apply where the applicant chooses an Authority other than this one to be the IPEA and the chosen IPEA has notified the International Bureau under Rule 66.1bis(b) that written opinions of this International Searching Authority will not be so considered.

If this opinion is, as provided above, considered to be a written opinion of the IPEA, the applicant is invited to submit to the IPEA a written reply together, where appropriate, with amendments, before the expiration of three months from the date of mailing of Form PCT/ISA/220 or before the expiration of 22 months from the priority date, whichever expires later.

For further options, see Form PCT/ISA/220.

3. For further details, see notes to Form PCT/ISA/220.

Name and mailing address of the ISA:



European Patent Office
D-80298 Munich
Tel. +49 89 2399 - 0 Tx: 523656 epmu d
Fax: +49 89 2399 - 4465

Authorized Officer

Marti, P

Telephone No. +49 89 2399-7858



**WRITTEN OPINION OF THE
INTERNATIONAL SEARCHING AUTHORITY**

International application No.
PCT/CH2004/000526

1A22

2005

Box No. I Basis of the opinion

1. With regard to the **language**, this opinion has been established on the basis of the international application in the language in which it was filed, unless otherwise indicated under this item.
☐ This opinion has been established on the basis of a translation from the original language into the following language , which is the language of a translation furnished for the purposes of international search (under Rules 12.3 and 23.1(b)).
2. With regard to any **nucleotide and/or amino acid sequence** disclosed in the international application and necessary to the claimed invention, this opinion has been established on the basis of:
 - a. type of material:
☐ a sequence listing
☐ table(s) related to the sequence listing
 - b. format of material:
☐ in written format
☐ in computer readable form
 - c. time of filing/furnishing:
☐ contained in the international application as filed.
☐ filed together with the international application in computer readable form.
☐ furnished subsequently to this Authority for the purposes of search.
3. ☐ In addition, in the case that more than one version or copy of a sequence listing and/or table relating thereto has been filed or furnished, the required statements that the information in the subsequent or additional copies is identical to that in the application as filed or does not go beyond the application as filed, as appropriate, were furnished.
4. Additional comments:

Box No. II Priority

1. ☒ The following document has not been furnished:

☒ copy of the earlier application whose priority has been claimed (Rule 43*bis*.1 and 66.7(a)).

☐ translation of the earlier application whose priority has been claimed (Rule 43*bis*.1 and 66.7(b)).

Consequently it has not been possible to consider the validity of the priority claim. This opinion has nevertheless been established on the assumption that the relevant date is the claimed priority date.

2. ☐ This opinion has been established as if no priority had been claimed due to the fact that the priority claim has been found invalid (Rules 43*bis*.1 and 64.1). Thus for the purposes of this opinion, the international filing date indicated above is considered to be the relevant date.

3. Additional observations, if necessary:

Box No. V Reasoned statement under Rule 43*bis*.1(a)(i) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement

1. Statement

Novelty (N)	Yes: Claims	5,7-9
	No: Claims	1-4,6,10
Inventive step (IS)	Yes: Claims	
	No: Claims	1-10
Industrial applicability (IA)	Yes: Claims	1-10
	No: Claims	

2. Citations and explanations

see separate sheet

Box No. VII Certain defects in the international application

The following defects in the form or contents of the international application have been noted:

see separate sheet

Box No. VIII Certain observations on the international application

The following observations on the clarity of the claims, description, and drawings or on the question whether the claims are fully supported by the description, are made:

see separate sheet

IAP20 Rejected 20 FEB 2006

Re Item V

Reasoned statement with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement

1.1 Reference is made to the following documents:

D1: WO 02/34302 A

D2: WO 01/23008 A

D3: WO 99/03514 A

1.2 The priority document is at present not available to the examiner, so that the claimed priority has not been checked. However, the attention of the applicant is drawn to the relevance of document WO 2004/032620 for the subject-matter of at least claims 1 and 10.

2.1 Document D1 discloses an apparatus adapted to disseminate a volatile liquid into an atmosphere from a reservoir (= emanator device, 1, comprising a container, 4). The dissemination is achieved by means of a transfer member (= end of wicking portion, 7, see page 7, lines 21-23) in contact with the liquid (3), and a capillary member (= emanation surface, 6) in liquid contact with the transfer member. The capillary member comprises an evaporating surface bearing primary capillary channels (= grooves, see 23 in Fig. 2), and being intersected by secondary capillary channels (see channels between primary channels 23, forming a triangle), wherein the secondary channels have a "substantially" smaller cross-sectional area than the primary channels (at least the intersecting channels forming the two triangles).

Therefore, the subject-matter of claim 1 lacks novelty over D1 (Art. 33.2 PCT).

The same applies to claim 10.

2.2 Document D2 disclose an apparatus adapted to disseminate a volatile liquid into an atmosphere from a reservoir (= dispenser comprising a refill, see claim 21). The apparatus comprises a transfer member (= shaft, see 14 in Fig. 3) in contact with the liquid, and a capillary member in liquid contact with the transfer member comprising a frame and a gauze sheet (see page 8, lines 5-16), wherein the frame (*made of cardboard*) distributes and transfers the liquid to the gauze sheet using

capillary action.

Even if D2 does not mention the size of the channels in gauze and cardboard, it can be assumed that the cross-sectional area of the frame pores or channels (= secondary channels) is "substantially" smaller than the cross-sectional area of the gauze sheet channels (= primary channels). Note that claim 1 does not define the geometry of the channels.

Consequently, the subject-matter of present claim 1 can be read from D2 (Art. 33.2 PCT).

The same applies to claim 10.

- 3.1 The apparatus of claim 5 differs from the apparatus of D1 in that the transfer member is a gap of capillary proportions formed at the junction of two flat surfaces. Starting from D1 as the closest prior art document, the problem to be solved would be the provision of an alternative transfer member.

D3 discloses an air freshener dispenser device with a non-porous capillary wicking function, wherein the transfer member is a gap (= capillary spacing proximity, see page 4, lines 20-21) between container (12) and container (14).

A skilled person looking for a way to solve the above mentioned problem would obviously consider the teaching of D3 in order to arrive at the proposed solution.

Therefore, the subject-matter of dependent claim 5 does not involve an inventive step in the light of the disclosures of D1 and D3 (Art. 33.3 PCT).

- 3.2 Dependent claims 2-4 and 6-9 contain features which either are disclosed in the cited documents or fall within the customary practice followed by persons skilled in the art and do not involve an inventive step as no particular or unexpected effect is apparent.

Re Item VII

Certain defects in the international application

1. The features of the claims are not provided with reference signs placed in parentheses (Rule 6.2(b) PCT).

Re Item VIII

Certain observations on the international application

1. The term "**substantially** smaller" in claims 1 and 10 is vague and renders the scope of the claims unclear (Art. 6 PCT).
According to the description, the cross-sectional area should be less than 90%.